

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES LEE BROWN,

Petitioner,

v.

CASE NO. 2:05-cv-969

TIM BRUNSMAN, Warden,

**JUDGE MARBLEY
MAGISTRATE JUDGE ABEL**

Respondent.

OPINION AND ORDER

On May 2, 2006, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Doc. No. 13. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. Doc. No. 15. Petitioner objects to all of the Magistrate Judge's recommendations. The petition alleges four claims of ineffective assistance of trial counsel. These claims were never presented to the Ohio courts. Petitioner was represented by the same attorney at trial and on direct appeal. His first opportunity to raise the ineffective assistance of trial counsel claims was when he filed for postconviction relief. However, he did not raise the ineffective assistance of counsel claims in his petition for postconviction relief. Petitioner asserts as cause for the procedural default of his claims the ineffective assistance of counsel; however, all of petitioner's claims are barred due to his failure to present such claims in post convictions proceedings. The ineffective assistance of counsel cannot constitute cause for petitioner's procedural default where he had no right to counsel in such proceedings. *See Gulertekin v. Tinnelman-Cooper*, 340 F.3d 415, 425 (6th Cir. 2003), citing *Coleman v. Thompson*, 501 U.S. 722, 752-53 (1991); *Pennsylvania v. Finley*, 481 U.S. 551, 555

(1987).

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. For the reasons discussed at length in the *Report and Recommendation*, petitioner's objections are **OVERRULED**.

The *Report and Recommendation* is hereby **ADOPTED AND AFFIRMED**. This case is **DISMISSED**.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Judge